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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**VIOLETTA HOANG, LIVIA HSIAO,  
MICHAEL BLACKSBURG, and  
MATTHEW HALL**, individually and on  
behalf of a class of similarly situated  
persons,

Plaintiffs,

vs.

**REUNION.COM, INC.**, a California  
corporation,

Defendant.

Case No. 08-CV-03518-MMC

**JOINT AMENDED CASE  
MANAGEMENT STATEMENT FOR  
10/22/2010 CASE MANAGEMENT  
CONFERENCE**

DATE: October 22, 2010  
TIME: 10:30 a.m.  
CTRM: 7, 19th Floor

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, and the  
2 Northern District of California Standing Order, plaintiffs Violetta Hoang, Livia Hsiao,  
3 Michael Blackburg, and Michael Hall (collectively, "Plaintiffs") and defendant  
4 Reunion.com, Inc. ("Reunion.com" or "Defendant") respectfully submit the following  
5 Amended Rule 26(f) Joint Case Management Statement (the "Amended Statement").

### 6 **PROCEDURAL BACKGROUND**

7 On July 23, 2008 Plaintiffs filed the initial complaint in this action on behalf of  
8 themselves and a class of similarly situated individuals, alleging that Defendant had  
9 violated California Business and Professions Code section 17529.5 by sending and/or  
10 advertising in emails that: 1) contained or were accompanied by third-party domain  
11 names without the permission of the third parties in violation of section 17529.5(a)(1); 2)  
12 contained or were accompanied by falsified, misrepresented, or forged header  
13 information in violation of section 17529.5(a)(2); and 3) contained subject lines that  
14 Defendant knew were likely to mislead recipients, acting reasonably under the  
15 circumstances, about a material fact regarding the contents of the subject matter of the  
16 messages in violation of section 17529.5(a)(3).

17 On October 6, 2008 the Court granted Defendant's motion to dismiss the initial  
18 complaint in this action, and October 24, 2008 Plaintiffs filed their First Amended  
19 Complaint. The Court granted Defendant's motion to dismiss the First Amended  
20 Complaint on December 23, 2008. On March 31 2010, the Court issued an Order  
21 Reconsidering and Vacating in Part December 23, 2008 Order, which among other  
22 things, denied Defendant's motion to dismiss the First Amended Complaint.

23 Defendant requested that the Court certify its March 31, 2010 order for  
24 interlocutory review, and on June 9, 2010, the Court certified the order. However, the  
25 Ninth Circuit denied Defendant's request for an interlocutory appeal on August 27,  
26 2010. During the pendency of this interlocutory review process, discovery in this action  
27 was stayed by the Court.

The parties have filed prior joint case management statements on 10/29/2008 [D.E. No. 41], 02/27/2009 [D.E. No. 62], 05/13/2009 [D.E. No. 72], 07/02/2009 [D.E. No. 81], and 10/16/2009 [D.E. No. 98].

### **JURISDICTION AND SERVICE**

The parties do not dispute that the Court has personal jurisdiction over Defendant or that service of process was adequate. Plaintiffs contend that this Court has determined that the Plaintiffs have Article III standing to bring this action. Defendant disputes this contention as the Court has not ultimately made said determination and, in any event, does not concede that legal issue.

Plaintiffs contend that the Court has subject matter jurisdiction under 28 U.S.C. §1332(d) because the amount in controversy in this matter exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and this matter is a class action in which a member of the class of Plaintiffs is a citizen of a state different from the Defendant, and less than two-thirds of the members of the proposed plaintiff classes in the aggregate are citizens of California. Defendant contends that the court lacks subject matter jurisdiction for the reasons stated in its Answer, including because the amount in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs under *Bank v. Hydra Group LLC*, 10-CV-1770 (JG) (E.D.N.Y. Sept. 24, 2010) (court dismissed putative class action under California spam statute on its own motion for lack of subject matter jurisdiction, because of the \$1,000,000 per “incident” cap).

#### **1. FACTS:**

##### **Plaintiffs’ Statement:**

Reunion.com operates an Internet-based social networking website that it advertises by, among other means, unsolicited bulk commercial electronic mail messages sent by Reunion.com to individuals with no prior relationship to the company. Certain of such unsolicited bulk commercial electronic mail messages (the “Emails”)

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1 contain false, misleading and/or forged subject lines, from lines, headers and body text.  
 2 Such falsity is intended by Reunion.com to deceive recipients into believing that the  
 3 Emails are personal pleas to “connect” with a named individual Reunion.com registrant  
 4 known to the recipients. Such falsity is further intended by Reunion.com to deceive  
 5 recipients into believing that the named individual registrant had searched for the  
 6 recipient by means of Reunion.com’s website.

7 Reunion.com and the FTC each have received countless complaints from  
 8 Reunion.com registrants, Email recipients, and other consumers regarding  
 9 Reunion.com’s false and deceptive Emails. Business rating services, including the  
 10 Better Business Bureau, advise consumers to use caution in dealing with Reunion.com  
 11 or to avoid Reunion.com entirely. Consumers rely on subject lines, from lines and  
 12 headers in deciding whether to open electronic mail messages, and consumers are  
 13 much more likely to open what appear to be personal messages coming from  
 14 acquaintances or other individuals. Plaintiffs are individual recipients of the Emails who  
 15 bring suit under California Business and Professions Code Section 17529.5.

16 This Court has held that the allegations in plaintiffs’ complaint support the claim  
 17 that these emails were misleading and deceptive. See Order of District Court Dated  
 18 March 31, 2010, Docket No. 107, at 2 (noting that the Court had previously stated that it  
 19 “agreed with plaintiffs that they had adequately alleged the e-mails they received from  
 20 defendant contained false statements, that defendant knew the statements would  
 21 convey false representations to the recipients, that the statements were material, and  
 22 that defendant intended the recipients to rely on the statements.”).

#### 23 24 **Defendant’s Statement:**

25 This is a case about Reunion.com’s “**See Who’s Here & Invite Who’s Not**”  
 26 online tool (the “Service”), which permitted a registered member to invite his or her  
 27 contacts from one of four webmail services (AOL, Gmail, Hotmail, and Yahoo) to  
 28 connect at Reunion.com. As the name of the Service makes obvious, if the member

1 entered his or her webmail address at one of those services, entered the password for  
2 that account, and clicked "CONTINUE," Reunion.com software (a) performed a search  
3 of its member database for those email addresses, and (b) for every address not found  
4 in its database, transmitted an email invitation to that address.

5 The emails at issue in this case were not "email advertisements" at all, and were  
6 in fact all accompanied by "header information" that was truthful and accurate in every  
7 respect. Plaintiffs' mantra of misleading "From Lines" is based upon words that actually  
8 do not even appear in California's anti-spam law, section 17529.5. Instead, that law  
9 prohibits email advertisements that contain or are accompanied by "falsified,  
10 misrepresented or forged header information." Cal. Bus. & Prof. Code § 17529.5  
11 (emphasis added). Here, the header information is very simply the most accurate  
12 reflection of the technical reality of how Reunion's service operated: (a) a Reunion  
13 member actively requested that an email invitation be transmitted by clicking on the  
14 "CONTINUE" button of the "See Who's Here & Invite Who's Not" webpage, and (b)  
15 Reunion.com transmitted the messages to any email address not found in its member  
16 data base. It would have been less accurate to have omitted the identity of the member  
17 whose email contacts were invited. No facts are misrepresented in the header  
18 information.

19 In addition, Reunion.com did not initiate "email advertisements" that contain or  
20 are accompanied by "a subject line that a person knows would be likely to mislead a  
21 recipient, acting reasonably under the circumstances, about a material fact regarding  
22 the contents or subject matter of the message." Instead, the subject lines of the  
23 invitation emails (which varied over time, but which for example stated "Please connect  
24 with me" or "[Sender] Wants to Connect with you!") very accurately preview the purpose  
25 and content of the invitation to connect at Reunion.com, a people search and social  
26 networking service. Defendant also did not violate section 17529(a)(1), relating to the  
27 unauthorized use of a third party's domain name.

28 //

2. **LEGAL ISSUES:**

**Plaintiffs' Statement of Legal Issues:**

- A. Whether this action should be certified as a class action under Federal Rule of Civil Procedure 23;
- B. Whether the emails at issue contained or were accompanied by third-party domain names without the permission of the third parties in violation of section 17529.5(a)(1);
- C. Whether the emails at issue contained or were accompanied by falsified, misrepresented, or forged header information in violation of section 17529.5(a)(2);
- D. Whether the emails at issue contained subject lines that Defendant knew were likely to mislead recipients, acting reasonably under the circumstances, about a material fact regarding the contents of the subject matter of the messages in violation of section 17529.5(a)(3).

**Defendant's Statement of Legal Issues:**

In addition to those listed above, Defendant identifies the following issues:

- A. Whether the invitation messages are "commercial email advertisements" within the meaning of section 17529.5(a).
- B. Whether the Court has subject matter jurisdiction in light of the statutory cap on damages of \$1,000,000 or \$100,000, pursuant to section 17529.5(b)(1)(B).
- C. Whether Reunion had implemented practices and procedures reasonably designed to prevent unsolicited commercial e-mail advertisements being sent in violation of Section 17529, such that Section 17529(b)(2) reduction in damages applies.

3. **MOTIONS:**

There are no motions pending before the Court.

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**Plaintiffs' Anticipated Motions:**

Plaintiffs anticipate, after receiving required discovery, filing a motion for class certification and filing a motion for summary judgment or summary adjudication,

**Defendant's Anticipated Motions:**

Defendant believes the case is appropriate for a threshold judicial examination of the emails and accompanying header information under Federal Rules of Civil Procedure 12(b)(1), 12(c), and/or 56. Defendant believes a preemptive motion to deny class certification, as permitted by *Vinole v. Countrywide Home Loans Inc.*, 571 F.3d 935 (9th Cir. 2009) may also be appropriate (and strongly rejects Plaintiffs suggestion that the Court postpone class determination for another year).

**4. AMENDMENT OF PLEADINGS:**

Plaintiffs' investigation of the relevant facts is ongoing, and Plaintiffs reserve the right to amend their complaint as permitted under the Federal Rules of Civil Procedure.

Defendant's investigation of the relevant facts is ongoing, and Defendant reserves the right to amend its answer as permitted under the Federal Rules of Civil Procedure.

**5. EVIDENCE PRESERVATION:****Plaintiffs' Statement:**

Plaintiffs' counsel has informed Plaintiffs of their obligations to preserve evidence. Plaintiffs agree to preserve any and all evidence that could reasonably be relevant to this action.

**Defendant's Statement:**

Defendant's counsel informed Defendant and its employees of their obligations to preserve evidence. Defendant agrees to preserve any and all evidence that could reasonably be relevant to this action.

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1 **6. DISCLOSURES:**

2 **Plaintiffs' Statement:**

3 Plaintiffs propose that initial disclosures to be served by plaintiffs and defendant  
4 on or before November 5, 2010.

5 **Defendant's Statement:**

6 Defendant proposes to avoid setting such arbitrary dates before the JAMS  
7 mediation (to which all are devoting substantial time and attention) has even  
8 commenced.

9 **7. DISCOVERY:**

10 **a. Discovery Taken To Date**

11 As of the filing of this Amended Case Management Statement, no party has  
12 served any written discovery.

13 **b. Scope of Anticipated Discovery**

14 **Plaintiffs' Statement:**

15 Plaintiffs intend to pursue discovery on the following topics through written  
16 discovery and party and third-party depositions.

17 A. Corporation formation, corporate organization, and employee structure  
18 documents for Defendant.

19 B. The design, creation, and publication of the emails at issue in this action (the  
20 "Emails");

21 C. Third parties' involvement in the design, creation, and publication of the  
22 Emails.

23 D. Contact information for the recipients of the Emails.

24 E. The design, creation, and publication of Defendant's websites and web  
25 pages;

26 F. Third parties' involvement in the design, creation, and publication of  
27 Defendant's websites and web pages.

28 G. Analysis and statistics for the Emails and Defendant's websites.



1 H. Defendant's user registration process;

2 I. The research, drafting, and publication of Defendant's notices, disclosures,  
3 privacy policies, and terms of use, and the method of their display to  
4 consumers;

5 J. Defendant's marketing research, marketing analysis, marketing practices, and  
6 knowledge of third parties' marketing practices.

7 K. Agreements between Defendant and third party email service providers.

8 L. Consumer complaints about Defendant's practices.

9 M. Defendant's finances.

10 **Defendant's Statement:**

11 Defendant does not agree with the scope of Plaintiff's discovery described  
12 above, but of course reserves the right to object to same when and if served. After or  
13 perhaps during the mediation phase, the parties should confer about a discovery plan.  
14 For its part, Defendant contends that this case is susceptible to a phased approach,  
15 where undisputed threshold facts regarding the emails in question are presented to the  
16 Court for summary determination, including on the basis of intervening developments in  
17 the law. As for the named plaintiffs, Defendant does not anticipate that there are any  
18 material facts that could be genuinely disputed, given the plain language of the  
19 California statute.

20 That said, prior to filing a motion for summary dismissal, it may be necessary or  
21 appropriate to obtain basic written and oral discovery from the named plaintiffs,  
22 addressing matters such as their respective versions of emails and header information,  
23 information about their email clients and browsers, their email contact lists, pre-litigation  
24 communications with one another and with Senders, and other simple matters, their  
25 interactions with Reunion.com and MyLife.com. Discovery from the non-party Senders  
26 on these sorts of topics may be appropriate as well. In terms of a complete and specific  
27 list, Defendant believes a narrowly tailored series of requests (on either party) could  
28 easily be fashioned if the JAMS mediation is not successful or heading toward success.

1 Expert discovery may be appropriate as well, i.e., to (confidentially) examine and  
2 report on the source code which accomplished the "See Who's Here & Invite Who's  
3 Not" process.

4 **c. Electronically Stored Information**

5 **Plaintiffs' Statement:**

6 The plaintiffs anticipate that electronically stored information ("ESI") will comprise  
7 a significant portion of the discovery at issue in this action. The plaintiffs believe that  
8 ESI should be produced in formats reasonably useable to the receiving party, without  
9 the need to create databases and data fields that do not already exist. The plaintiffs  
10 believe that ESI should be produced as single-page TIFF images with associated  
11 information including metadata in a Concordance load file or PDF files with Metadata.  
12 The plaintiffs also believe that ESI not reasonably useable as single-page TIFF images  
13 or PDF files, such as audiovisual data, large spreadsheets, or database information,  
14 should be produced in native format. Upon reasonable request in writing, the parties  
15 should produce in native format ESI previously produced as single-page TIFF or PDF  
16 images with metadata.

17 The plaintiffs do not foresee any significant modifications or other adjustments  
18 that will need to be made to discovery rules or ordinary discovery procedures.

19 **Defendant's Statement:**

20 The defendant anticipates that electronically stored information ("ESI") will  
21 comprise a significant portion of the discovery in this action, particularly if Plaintiffs  
22 succeed in obtaining the discovery described above. Plaintiffs ask for specific  
23 agreements in advance, for example, that all documents be converted to TIFF or .pdf  
24 formats. Defendant is not agreeable to stipulating to convert electronic documents into  
25 TIFF format, which is an expensive process. Defendant proposes to confer with  
26 Plaintiffs about the appropriate format, once it is determined what, if any, electronic  
27 documents are to be exchanged in the case.

28 //

**8. CLASS ACTIONS:****Plaintiffs' Statement:**

Plaintiffs have brought this action on behalf of a class of similarly situated individuals. Plaintiffs intend to conduct discovery before filing their motion for class certification. Plaintiffs intend to file a motion for class certification by September 30, 2011.

**Defendant's Statement:**

Defendant contends that certifying a class under the California anti-spam law would be unprecedented, and believes that a pre-emptive motion to deny class certification is appropriate.

**9. RELATED CASES:**

Not applicable.

**10. RELIEF:****Plaintiffs' Statement:**

Plaintiff asks that the Court to award the following relief to Plaintiff and against Defendants:

1. That the Court find that Defendant violation California Business and Professions Code section 17529.5(a)(1) as to Plaintiff Blacksbury and Hall and members of the Third Party Domain Subclass.
2. That the Court find that Defendant violation California Business and Professions Code section 17529.5(a)(2) and (a)(3) as to Plaintiffs Blacksbury, Hall, Hoang, and Hsiao and members of the Class.
3. That the Court enter a preliminary and permanent injunction enjoining Defendant from violating Cal. Bus. & Prof. C. §17529.5(a)(1), (a)(2) and (a)(3).
4. That the Court enter a judgment against Defendant in favor of Plaintiffs' and the Class members as follows:

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a. statutory damages in the amount of \$1000 for each email advertisement received by Plaintiffs Blackburg and Hall and each member of the Third Party Domain Subclass Class pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii);

b. statutory damages in the amount of \$1000 for each email advertisement received by Plaintiffs and each member of the Class pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii);

c. Plaintiffs' costs and attorneys' fees incurred by Plaintiffs in prosecuting this action, pursuant to Cal. Bus. & Prof. C. §17529.8(B)(2);

5. Interest, including prejudgment interest, on the foregoing sums;

6. Such other relief the Court determines is just and proper.

**Defendant's Statement:**

The case should be dismissed with prejudice as to all claims and all plaintiffs, including any putative class members.

**11. SETTLEMENT AND ADR:**

**Plaintiffs' Statement:**

The parties have a private (not court ordered) mediation scheduled on October 21, 2010, before the Honorable Judge Daniel Weinstein (Ret.), of JAMS, in San Francisco. The mediation was scheduled after the Court had scheduled the October 22 Cash Management Conference (CMC) in this action. The fact that the mediation is to be held on October 21, the day before the CMC, is coincidental. It was the first available date on Judge Weinstein's busy calendar. Nevertheless, the coincidence does create significant efficiencies, allowing Boston based counsel for plaintiffs and Washington, D.C. and Los Angeles based counsel for defendant to attend both the mediation and the CMC with one trip to San Francisco.

As indicated above, the CMC had already been scheduled by the Court when the mediation was scheduled. At that time defendant made no suggestion that the CMC be postponed due to the mediation. Had they done so, plaintiffs would have rejected the

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1 proposal for the same reasons that they rejected it when defendants first suggested it  
 2 last week. As the Court is aware, this case is now over two years old. Discovery has  
 3 not yet commenced. There is no reason to delay the orderly start of that discovery via  
 4 the scheduled CMC. Of course, if the October 21 mediation results in a settlement of  
 5 this action, the parties will report that to the Court at the CMC. BUT, the fact that the  
 6 parties have agreed to discuss resolution of this action, with the assistance of a  
 7 mediator, should not delay the CMC or the establishment by the court, at the CMC, of a  
 8 schedule for the orderly litigation of this now over two year old action.

9 In this regard, plaintiffs note that in this Case Management Statement, solely  
 10 because the parties have scheduled the mediation, the defendant has refused to  
 11 commit to and take any position as to what schedule for discovery and other aspects of  
 12 this case should be entered by this Court. Astonishingly, defendant even refuses to  
 13 state by what date the parties should exchange initial disclosures! Simply put, the  
 14 defendant is stalling.

15 This action needs to move forward. There is simply no good reason to delay that  
 16 forward movement because the parties have scheduled a mediation on October 21. If  
 17 the mediation is successful we will so advise the Court on October 22. But if this case  
 18 is not settled, a Case Management Order, setting the schedule proposed by plaintiffs  
 19 herein, should be entered by the Court at the October 22 CMC.

#### 20 **Defendant's Statement:**

21 The parties have a mediation scheduled on October 21, 2010, the day before the  
 22 case management conference presently scheduled in this matter. The parties have  
 23 retained the Honorable Judge Daniel Weinstein (Ret.), of JAMS, to supervise the  
 24 mediation. Confidential briefs were exchanged in that proceeding on October 13, 2010.  
 25 In light of the October 21 JAMS mediation session (the earliest date available on Judge  
 26 Weinstein's calendar), Defendant proposed that the parties jointly ask the Court to  
 27 adjourn the October 22 case management conference, and suggest that the parties file  
 28 a joint status report on or before November 1, 2010 reporting on the progress or

1 success of any settlement conversations. Defendant proposed that if the parties  
 2 mutually agreed settlement discussions were not fruitful to continue, the parties could  
 3 address the instant case management topics in that filing, i.e., with the benefit of the  
 4 information and ideas exchanged before the JAMS Mediator on critical issues such as  
 5 class definition. Plaintiff refused that plan.

6 **12. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:**

7 The parties do not consent to have a magistrate judge conduct all further  
 8 proceedings including trial and entry of judgment.

9 **13. OTHER REFERENCES:**

10 The case is not suitable for reference to binding arbitration, a special master, or  
 11 the Judicial Panel on Multidistrict Litigation.

12 **14. NARROWING OF ISSUES:**

13 **Plaintiffs' Statement:**

14 Plaintiff does not presently believe that the salient issues of fact in this matter are  
 15 capable of narrowing or stipulation.

16 **Defendant's Statement:**

17 As noted, as a threshold matter, Defendant believes that the Court can rule on  
 18 liability as a matter of law by examining a small set of materials that cannot be  
 19 genuinely disputed, such as the email invitations and header information received by  
 20 named plaintiffs, prior to the parties embarking upon full scale discovery, and perhaps  
 21 considering written expert testimony, if the one or both parties so elects.

22 **15. EXPEDITED SCHEDULE:**

23 **Plaintiffs' Statement:**

24 Plaintiffs do not believe that this is not the type of action that can be handled on  
 25 an expedited basis with streamlined procedures.

26 **Defendant's Statement:**

27 Defendant proposes that the parties expedite the case by engaging in the  
 28 narrowing process described in sections 3 and 14 above.

**16. SCHEDULING:****Plaintiffs' Statement:**

Plaintiffs propose the following schedule be entered for this action:

Last Day for Plaintiffs to File Class Certification Motion	09/30/2011
Non-Expert Discovery Cutoff	12/01/2011
Designation of Experts	01/20/2012
Designation of Rebuttal Experts	02/17/2012
Expert Discovery Cutoff	03/16/2012
Last Day to Hear Dispositive Motions	05/18/2012
Pretrial Conference	06/01/2012
Trial	06/18/2012

**Defendant's Statement:**

Defendant proposes that the parties jointly confer following the mediation on the scope and schedule for discovery (including Defendant's wish to engage in phased discovery, with threshold summary motions).

**17. TRIAL:**

The Parties agree to the case being tried by a jury. The Parties expect the trial will last for 7-10 days.

**18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:****Plaintiff's Statement:**

Plaintiff has filed a Certificate as to Interested Parties and certifies that other than the named parties, there is no such interest to report.

**Defendants' Statement:**

Defendant, a privately held company, has no such interest to report. Defendant will file the certificate prior to the Case Management Conference.

//

1 **19. OTHER MATTERS**

2 The parties do not presently know of any other matters to be addressed here that  
3 may facilitate the just, speedy and inexpensive disposition of this matter.

4  
5 Dated: October 18, 2010

**KRONENBERGER BURGOYNE, LLP**

6  
7 BY: s/Karl S. Kronenberger  
Karl S. Kronenberger

8 Attorneys for Plaintiffs Violetta Hoang, Livia  
9 Hsiao, Michael Blacksborg, and Michael  
10 Hall

11 Dated: October 18, 2010

**LAW OFFICES OF RONALD JASON  
PALMIERI, PC**

12  
13 BY: s/Ronald Jason Palmieri  
14 Ronald Jason Palmieri

15 Attorneys for Defendant Reunion.com, Inc.

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